

ILLINOIS POLLUTION CONTROL BOARD
November 16, 2006

MAPLE QUICK MART AND RANJIT SINGH,)	
)	
)	
Petitioners,)	
)	
v.)	PCB 07-21
)	(UST Appeal)
)	(90-Day Extension)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On September 28, 2006, the Maple Quick Mart and Ranjit Singh (collectively, Quick Mart) filed a joint notice to extend the 35-day period within which they may appeal a September 24, 2006 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.402, 105.406. The Agency, applying a \$15,000 deductible, determined that \$19,355 would be paid from the underground storage tank fund. The leaking underground petroleum storage tank facility is located at 3045 South Maple Avenue, Brookfield, Cook County.

Section 40(a)(1) of the Environmental Protection Act (Act) allows the Board to extend the appeal period beyond 35 days only after “written notice provided to the Board from the applicant and the Agency within the initial appeal period”. 415 ILCS 5/40(a)(1)(2004). Since the Agency had made no filing with the Board in response agree to the petitioners’ request, in early November the Board’s Clerk’s Office contacted the Agency. In response to that inquiry, the Agency provided the Clerk with a copy of a letter dated September 28, 2007 sent by an Agency attorney to petitioners’ attorneys. The letter provides in pertinent part that “[s]ince it appears that there was no deduction taken beyond the straightforward deductible amount, please be advised that the request for an extension of time is DENIED.”

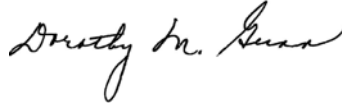
Absent agreement by the Agency, the Board has no authority under the Act to grant the requested extension. In some cases, where the Agency made no response to the extension request at all, the Board has construed petitioner’s request as a deficient petition for review. But, the Board cannot do so here. The Agency granted petitioners the entire amount requested, save the \$15,000 deductible. Accordingly, there is no relief the Agency has not granted petitioners. Under Section 57.9(c) of the Act, the Office of the State Fire Marshal’s office is charged with making determinations concerning eligibility and the amount of any deductible. Any challenge to the deductible amount was due to be filed within 35 days of the date of the OSFM decision. There is no Agency action here which the Board can review.

For all of the foregoing reasons, the Board denies petitioners’ request and closes this docket.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2004); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 16, 2006, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board